

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
PLANO DIVISION

In re:	§	Case No. 13-41815
	§	
MED-DEPOT, INC., <i>et al.</i>	§	(Chapter 11)
	§	
Debtors	§	Jointly Administered
	§	

**EXPEDITED MOTION FOR ORDER AUTHORIZING
MED-DEPOT, INC., TO ENTER INTO LEASE AGREEMENTS**

COMES NOW, Med-Depot, Inc. (“Med-Depot” or the “Debtor”) and files its Expedited Motion for Order Authorizing the Debtor to Enter into Lease Agreements (the “Motion”) and in support thereof respectfully represents as follows:

JURISDICTION

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Motion presents a core proceeding pursuant to 28 U.S.C. § 157(b).

PRELIMINARY STATEMENT

2. The Debtor has recently concluded negotiations to (i) renew and modify an existing site lease regarding the Debtor’s location in Grand Prairie, Texas, at a net savings of \$300 per month (the “Grand Prairie Lease Renewal”), (ii) move the Debtor’s location in Oklahoma City, Texas to a smaller space, at a net savings of \$300 per month (the “Oklahoma Replacement Lease”), and (iii) close a warehouse facility in Farmer’s Branch, Texas and move a portion of those facilities to an existing location (through a lease modification) in Plano, Texas, at a net savings that is still being negotiated (the “Plano Lease Modification”). The Debtor believes that entering into the proposed the Grand Prairie Lease Renewal, the Oklahoma

Replacement Lease, and the Plano Lease Modification (collectively, the “Lease Agreements”) is an exercise of the Debtor’s sound business judgment and should be approved pursuant to 11 U.S.C. §§ 105(a), 363(b),

BACKGROUND

A. The Bankruptcy Case

3. On July 26, 2013 (the “Petition Date”), Med-Depot, Inc. and Med-Depot Holdings, Inc. (the “Debtors”) filed their voluntary petitions for relief (the “Cases”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”). The Debtors cases have been jointly administered for procedural purposes under Case No. 13-41815. The Debtors continue to operate their respective businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The United States Trustee has not yet appointed a creditor’s committee, and no trustees or examiners have been requested or appointed in the Debtors’ chapter 11 cases.

B. The Debtors’ Corporate Structure and Business Operations

4. Med-Depot is an Oklahoma corporation incorporated in 1998 to be a national provider of respiratory therapy and home medical equipment (collectively, “HME”) to hospice providers and their patients. Med-Depot has approximately 42 locations in eight states, and the principal place of business for Med-Depot is located in Plano, Texas.

5. Med-Depot’s business consists primarily of HME rental, delivery, pickup, and service. Routinely rented equipment includes hospital beds, oxygen concentrators, nebulizers, suction machines, specialty mattresses, wheelchairs, and other related items. As of the Petition Date, the Debtors employ approximately 164 employees.

C. The Lease Agreements

(i) ***Grand Prairie Lease Renewal***

6. The Debtor and landlord MRI ACL Portfolio Investment Fund, LP are parties to a lease of non-residential real property in Grand Prairie, Texas. The Debtor has negotiated a renewal of such lease at a reduced rental rate of \$1,650 per month, constituting a \$300 per month reduction in rent. The renewed term of the Grand Prairie Lease Renewal expires July 31, 2014. The Debtor executed the Grand Prairie Lease Renewal on August 5, 2013 and believes that the renewal of an existing lease is in the ordinary course of the Debtor's business. In an abundance of caution, the Debtor requests court approval of the Debtor's execution of the Grand Prairie Lease Renewal, with such approval effective as of August 5, 2013. A true and correct copy of the Grand Prairie Lease Renewal is attached hereto as **Exhibit A-1** and incorporated by reference.

(ii) ***Oklahoma Replacement Lease***

7. The Debtor is party to an expiring lease of non-residential real property in Oklahoma City, Texas. The Debtor has located replacement space in a smaller location that is more suited to the Debtor's needs. The proposed Oklahoma Replacement Lease, which is attached hereto as **Exhibit A-2** and incorporated by reference, contains a one-year term with monthly rent of \$875. The proposed rent constitutes a \$300 per month reduction in rent compared to the expiring lease. The Debtor requests authority to execute the Oklahoma Replacement Lease.

(iii) ***Plano Lease Modification***

8. The Debtor is party to an expiring lease of non-residential real property in Farmer's Branch, Texas, that serves as warehouse space that the Debtor no longer requires.

However, the Debtor does require space for certain repair services previously located at the Farmer's Branch location. The Debtor is negotiating a modification to an existing lease of non-residential real property in Plano, Texas that will allow for repair services to be performed in space adjacent to the Debtor's existing corporate headquarters in Plano, Texas. The terms of the Plano Lease Modification are still being negotiated, but the termination of the lease of the Farmer's Branch location and the modification of the lease of the Plano location will result in a net savings to the Debtor's estate. In addition, the Plano Lease Modification will provide the Debtor increased efficiency and oversight, because repair facilities will be located adjacent to its corporate headquarters. The Debtor requests authority to execute the Plano Lease Modification.

RELIEF REQUESTED

3. The Debtor requests the Court authorize the Debtor to enter into the Lease Agreements pursuant to 11 U.S.C. § 363(b).

4. Bankruptcy Code section 363 provides, in pertinent part:

(b)(1) The trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.

11 U.S.C. § 363(b).

11. Under applicable legal standards, a debtor may use or sell property of the estate if the court finds that the transaction represents a reasonable business judgment by the debtor. *Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In re Continental Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (citing *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)); see also *In re ASARCO LLC*, 441 B.R. 813, 823 (S.D. Texas 2010), *aff'd*, 2011 U.S. App. LEXIS (5th Cir. 2011); *GBL Holding Co. v. Blackburn/Travis/Cole, Ltd. (In re State Park Building Group, Ltd.)*, 331 B.R. 251, 254 (N.D. Tex. 2005); *In re Wilde*

Horse Enters., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); *In re Ionosphere Clubs, Inc.*, 184 B.R. 648, 653 (S.D.N.Y. 1995).

12. Bankruptcy Code section 363 does not require that the court substitute its business judgment for that of the debtor. See, e.g., *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 676 (Bankr. S.D.N.Y. 1989) (court will not substitute a hostile witness's business judgment for debtor's unless testimony "established that [the debtor] has failed to articulate a sound business justification for its chosen course"). Rather, the court should ascertain whether the debtor has articulated a valid business justification for the proposed transaction. See, e.g., *Lewis v. Anderson*, 615 F.2d 778 (9th Cir. 1979), *cert. denied*, 449 U.S. 869, 101 S. Ct. 206 (1980). This is consistent with "the broad authority to operate the business of the debtor . . . [which] indicates Congressional intent to limit court involvement in business decisions by a trustee . . . [so that] a court may not interfere with a reasonable business decision made in good faith by a trustee." *In re Airlift Int'l, Inc.*, 18 B.R. 787, 789 (Bankr. S.D. Fla. 1982).

13. In this case, adequate business justification exists to allow the Debtor to enter into the Lease Agreements. The Debtors believes that it is in its best interest to approve the Grand Prairie Lease Renewal to allow for continued use of existing facilities at reduced rent and savings to the estate. The Debtor submits the Grand Prairie Lease Renewal was executed in the ordinary course of business, but in an abundance of caution seeks court approval of the Debtor's execution of the Grand Prairie Lease Renewal, with such approval effective as of August 5, 2013.

14. The Debtor additionally believes the proposed Oklahoma Replacement Lease is in the best interest of its estate because it will provide more suitable space at a rental rate \$300 per month less than that of the expiring lease.

15. Finally, the Debtor believes the proposed Plano Lease Modification to be in the best interest of its estate because it will result in a net savings and, in addition, provide the Debtor increased efficiency and oversight with repair facilities located adjacent to its existing corporate headquarters.

16. The Debtor maintains that the terms of the Lease Agreements are fair and reasonable, and the monthly rentals provided under the Lease Agreements are consistent with the market (or reflect a reduction of prior monthly rental rates).

17. Accordingly, because consummating the Lease Agreements reflects sound business judgment decision, this Court should grant this Motion.

18. Finally, through this Motion, the Debtor seeks a waiver of the stay imposed by Federal Rule of Bankruptcy Procedure 6004(h) for "cause," so that the order on this Motion may be effective immediately without the fourteen (14) day stay otherwise applicable. There is cause to waive such stay inasmuch as the Lease Agreements will result in continued occupancy and immediate savings, and will also allow the Debtor vacate space subject to expiring leases.

WHEREFORE, the Debtor respectfully requests that the Court enter an order (i) authorizing the Debtor to enter into the Lease Agreements, (ii) providing for the waiver of stay imposed by Federal Rule of Bankruptcy Procedure 6004(h), and (iii) granting any additional relief that the Court believes is fair and necessary.

RESPECTFULLY SUBMITTED this 14th day of August, 2013.

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**PROPOSED ATTORNEYS FOR
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 14, 2013, a copy of the foregoing was served via United States First Class Mail, Postage Prepaid, to the parties listed below:

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The undersigned further certifies that on August 14, 2013, a copy of the foregoing was served via electronic mail through the Court's CM/ECF system to all parties consenting to service through same.

/s/ Jay L. Krystinik
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